

April 25, 2023

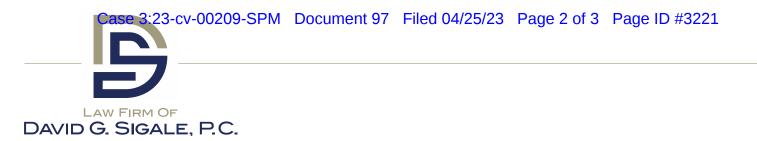
The Honorable Stephen P. McGlynn United States District Court for the Southern District Court of Illinois 750 Missouri Avenue East St. Louis, IL 62201

> Caleb Barnett v. Raoul, 3:23 CV 209-SPM Re: Dane Harrel, et al v. Kwame Raoul, et al, 3:23 CV 141-SPM

RESPONSE TO DEFENDANTS' SUPPLEMENTAL AUTHORITY

Applying the proper legal framework, *Delaware State Sportsmen's Association, Inc. v.* Delaware Department of Safety and Homeland Security, No. 22-951-RGA, 2023 U.S. Dist. LEXIS 51322 (D. Del. March 27, 2023), supports Plaintiffs' position. *Heller* and *Bruen* establish that law-abiding citizens have an absolute right to possess and use arms that are in common use for lawful purposes. See Pls. Motion for Preliminary Injunction at 8-10 (Dkt. #16). Delaware State Sportsmen's Association confirms that the firearms and ammunition magazines that Illinois bans are in common use and therefore cannot be banned. The case held that both "assault long guns" (a category similar to the rifles banned by Illinois) and magazines in excess of seventeen rounds (larger than the ten rounds allowed by Illinois) "are in common use for self-defense." 2023 U.S. Dist. LEXIS 51322, at *14, *22. Under Heller and Bruen, that is the end of the matter—a law banning commonly possessed arms is unconstitutional, full stop.

Delaware State Sportsmen's Association erred by nevertheless holding Delaware's bans to be constitutional. The root of the court's error was placing the "common use" test at the textual, rather than historical, stage of the Bruen inquiry. As a matter of plain text, Heller and Bruen make clear that the Second Amendment extends to all "instruments that facilitate armed



self-defense." Bruen, 142 S. Ct. at 2132. It is at the historical stage, where the government bears the burden, that *limitations* on the right to possess such instruments must be established. This again is clear from Heller, which derived the common use test from "the historical tradition of prohibiting the carrying of 'dangerous and unusual' weapons." 554 U.S. at 627 (emphasis added).

Delaware State Sportsmen's Association further erred by relying primarily on restrictions on Bowie knives and machine guns to justify bans of the type at issue here. See 2023 U.S. Dist. LEXIS 51322, at **31-32, 33-34. See Plaintiffs' Preliminary Injunction Reply at 8-9 (Bowie knives); 10–11 (machine guns). Both as to the type of arm and the burden on the right of armed self-defense, such regulations are not "relevantly similar" such that they are appropriate historical analogues. Bruen, 142 S. Ct. at 2132.

Respectfully submitted,

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CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

On April 25, 2023, this document was electronically filed with the District Court Clerk 1. via CM/ECF filing system;

2. Pursuant to F.R. Civ. P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale

Attorney for Plaintiffs (Atty. ID# 6238103) Dane Harrel, et al v. Kwame Raoul, et al 3:23 CV 141-SPM